

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

INFORMATION TECHNOLOGY, )  
INC., )

Plaintiff, )

4:08CV3207

V. )

BANKEAST, )

**MEMORANDUM AND ORDER**

Defendant. )

\_\_\_\_\_ )

This matter is before the court on Defendant BankEast's motion to dismiss or stay ([filing 11](#)). For the reasons set forth below, BankEast's motion will be denied as moot.

**I. Background**

On November 20, 2008, Defendant BankEast filed the instant motion to dismiss arguing that this case should be dismissed or stayed on account of the pendency of a Tennessee state court action which BankEast brought against Plaintiff Information Technology, Inc. ("ITI"). *See BankEast v. Information Technology, Inc.*, No. 173536-3 (Chancery Court for Knox County, Tenn. 2008). BankEast requested that this court abstain from exercising its jurisdiction because the Tennessee state court proceeding involved the same contracts that are at issue in this suit.

However, after BankEast filed this motion to dismiss or stay ([filing 11](#)), the Tennessee state court proceeding referred to in BankEast's motion was removed to the United States District Court for the Eastern District of Tennessee. *See BankEast v. Information Technology, Inc.*, No. 3:08-cv-476, CM/ECF [Filing 1](#) (E.D. Tenn.

2008). A motion to remand the action to state court was filed in the Tennessee federal court on December 22, 2008. Id. at CM/ECF Filing 8. On account of the pendency of the motion to remand, this court ordered that it would defer ruling on the motion to dismiss (filing 11) until the Tennessee federal court ruled on BankEast's motion to remand (filing 26).

On July 30, 2009, Judge Thomas A. Varlan of the United States District Court for the Eastern District of Tennessee at Knoxville issued an order transferring the Tennessee action to this court. *BankEast v. Information Technology, Inc.*, No. 3:08-cv-476, CM/ECF Filing 12 (E.D. Tenn. 2008).<sup>1</sup> Judge Varlan's order did not, however, address BankEast's pending motion to remand. Therefore, on September 3, 2009, this court issued a memorandum and order giving the parties until October 5, 2009, to advise the court whether it was appropriate or necessary for the court to rule on BankEast's motion to remand (filing 33). In compliance with this order, BankEast notified the court that it wishes to withdraw its motion to remand in *BankEast v. Information Technology, Inc.*, Case No. 8:09-cv-0259 (D. Neb. 2009) (filing 34).

## II. Analysis

Through this motion, BankEast requests that this court abstain from exercising its jurisdiction because the Tennessee court proceeding involves the same contracts that are at issue in this suit. Because the Tennessee action is no longer pending and has been transferred to this court, BankEast's motion to dismiss will be denied as moot. However, because it appears to the court that this case and *BankEast v. Information Technology, Inc.*, Case No. 8:09-cv-0259 (D. Neb. 2009) involve similar, if not identical issues, the parties will be given until November 9, 2009, to show

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<sup>1</sup> The former Tennessee action is docketed in this court as *BankEast v. Information Technology, Inc.*, Case No. 8:09-cv-0259 (D. Neb. 2009).

cause as to why these actions should not be consolidated pursuant to [Fed. R. Civ. P. 42](#).

IT IS ORDERED:

1. BankEast's motion to dismiss or stay ([filing 11](#)) is denied as moot;
2. The parties shall have until November 9, 2009, to show cause as to why this action should not be consolidated with *BankEast v. Information Technology, Inc.*, Case No. 8:09-cv-0259 (D. Neb. 2009) or, alternatively, to consent to consolidation;
3. A separate order shall be issued in *BankEast v. Information Technology, Inc.*, Case No. 8:09-cv-0259 (D. Neb. 2009) noting that the motion to remand pending in that case has been withdrawn by BankEast ([filing 34](#)).

October 7, 2009

BY THE COURT:

*Richard G. Kopf*

United States District Judge